

TRIAL COURT CHEAT SHEET

EXPUNGEMENT I.C. 35-38-9

CONTACT:
Libby Milliken
libby.milliken@courts.in.gov
 Direct: 317-234-8760
 30 S. Meridian St., Suite 500
 Indianapolis, IN 46204
 Main: 317-232-2542
 Fax: 317-233-6586

Expungement Petitions – I.C. 35-38-9

Type of Petition:	Type of criminal cases involved:	Handling for Filing:
Arrest, No Conviction Petitions filed under IC 35-38-9-1	<ul style="list-style-type: none"> Arrests or juvenile adjudications that <u>did not result in</u> convictions Arrests or juvenile adjudications for which resulting <u>conviction was vacated</u> on appeal May or may not have cause number associated with arrest records 	<p>Per Chapter 44 of the Trial Court Administration Manual:</p> <ul style="list-style-type: none"> Petition is to be filed in/assigned to court in which original charges were handledⁱ: <ul style="list-style-type: none"> Filed under original cause number <u>If no criminal charges were filed</u> and no court ever assigned, then petition may be filed in/assigned to a court with criminal jurisdiction in the county where the arrest occurredⁱⁱ: <ul style="list-style-type: none"> New MC cause number for adult arrest New JM cause number for juvenile arrest No filing fee One petition per arrestⁱⁱⁱ Both Petition and Order are confidential^{iv}, but court file and chronological case summary are not <ul style="list-style-type: none"> CCS entries should refer to “confidential petition” and “confidential order” <p>Steps for Odyssey:</p> <ol style="list-style-type: none"> Create appropriate case Motion Filed: comment should state that filing is confidential

		<ol style="list-style-type: none"> Order granting or Order Denying events: comment should state that Order is confidential See below for additional steps.
<h2>Convictions</h2> <p>Petitions filed under:</p> <ul style="list-style-type: none"> IC 35-38-9-2, IC 35-38-9-3, IC 35-38-9-4, and IC 35-38-9-5. 	<ul style="list-style-type: none"> “Section 2”: misdemeanors and D felonies (level 6 felonies) alternatively sentenced as misdemeanors “Section 3”: D felonies (level 6 felonies) not resulting in bodily injury “Section 4”: other non-excluded felonies not resulting in serious “Section 5”: remaining non-excluded felonies with consent of the prosecutor bodily injury 	<p>Per Chapter 44 of the Trial Court Administration Manual:</p> <ul style="list-style-type: none"> Petition is to be filed in the circuit or superior court in the county of conviction Requires new MI cause number (petitions usually address convictions entered under multiple cause numbers) No filing fee One petition, per county – may address multiple convictions entered under multiple cause numbers^v Both Petition and Order are confidential^{vi}, but court file and chronological case summary are not <ul style="list-style-type: none"> CCS entries should refer to “confidential petition” and “confidential order” <p>Steps for Odyssey:</p> <ol style="list-style-type: none"> Create appropriate case Motion Filed: comment should state that filing is confidential Order granting or Order Denying events: comment should state that Order is confidential See below for additional steps.

Note: Expungement/Sealing remedies provided under I.C. 35-38-5-5.5 and I.C. 35-38-8 no longer exist. Both of these statutes have been repealed effective July 1, 2013. This means that adult criminal records are never deleted or destroyed.

Expungement Orders – I.C. 35-38-9

Type of Order:	Type of Criminal Cases Involved:	End result – what happens to the records?
“Section 1” Orders (IC 35-38-9-1(f))	<ul style="list-style-type: none"> Only pertains to “Section 1” petitions (Arrests or juvenile adjudications without convictions) 	<ul style="list-style-type: none"> Removal of records from “alphabetically arranged criminal history information system” maintained by Indiana State Police and/or local law enforcement agency^{vii} No change or alteration required in: <ol style="list-style-type: none"> Internal records of law enforcement agency; Records of court where criminal charges were filed; Records that relate to a deferral program^{viii} <p>Notes:</p> <ul style="list-style-type: none"> Unless the <u>expungement order says otherwise</u>^{ix}, the CCS may still appear on court records public access system Unless the <u>expungement order says otherwise</u>, the original criminal case court file is open to public if it still exists <p>Steps in Odyssey:</p> <ol style="list-style-type: none"> If case is to be removed from Public Access, the security group on the Detail Tab should be set to Sealed.
“Section 6” Orders (IC 35-38-9-6)	<ul style="list-style-type: none"> “Section 2” convictions <ul style="list-style-type: none"> Misdemeanor D Felonies (and level 6 felonies) reduced to Misdemeanors “Section 3” convictions <ul style="list-style-type: none"> D Felonies (and level 6 felonies) with no bodily injury Order on a petition that addresses convictions under multiple cause numbers may contain 	<p>Records in possession of</p> <ul style="list-style-type: none"> Indiana DOC, Indiana BMV, and Law enforcement agency who incarcerated, provided treatment or services Other person who provided treatment services <ul style="list-style-type: none"> release to anyone without court order is prohibited; exception: law enforcement officer acting in the course of official duty.^x <p>Records in possession of ISP Central Records Depository:</p> <ul style="list-style-type: none"> Expunged conviction records must be sealed May be disclosed to: <ul style="list-style-type: none"> ■ <u>Prosecutor</u> and/or <u>defense attorney</u> if:

	<p>both a “Section 6” order and a “Section 7” order</p>	<ul style="list-style-type: none"> • Court order; and • Necessary to professional duties <ul style="list-style-type: none"> ■ <u>Probation department</u> if: <ul style="list-style-type: none"> • Court order; and • Necessary to prepare presentence report ■ <u>FBI and DHS</u> ■ <u>Supreme Court</u>, ISBLE (executive director and employees) for purpose of determining if applicant to bar has good moral character ■ Person complying with Secure and Fair Enforcement Mortgage Licensing Act (12 U.S.C. 5101 et seq.)^{xi} <p>Trial Court’s File and Records:</p> <ul style="list-style-type: none"> ○ “permanently sealed” ○ No one outside of court administrative personnel gets access^{xii} ○ Exception: Prosecutor may submit written application to court^{xiii} ○ Court’s paper file should be clearly marked “EXPUNGED PER IC 35-38-9-6, Permanently Sealed”, so court staff will know that the file may not be given to anyone without court order. ○ Court case records should not appear on public access website. <p>Appellate Court’s File and Records:^{xiv}</p> <ul style="list-style-type: none"> ○ Petitioner’s name is redacted from the opinion or memorandum decision as it appears on the computer gateway; and ○ Redacted copy of opinion is provided to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement. ○ The supreme court and court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner’s name. <p>Expungement order does not affect an existing or pending driver’s license suspension.^{xv}</p> <p>Sex Offender Registry:^{xvi}</p>
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<p>“Section 7” Orders (IC 35-38-9-7)</p>	<ul style="list-style-type: none"> • “Section 4” convictions <ul style="list-style-type: none"> ○ D felonies (and level 6 felonies) with bodily injury ○ Other felonies – no serious bodily injury • “Section 5” convictions <ul style="list-style-type: none"> ○ Remaining non-excluded felonies^{xviii} • Order on a petition that addresses convictions under multiple cause numbers may contain both a “Section 6” order and a “Section 7” order 	<p>Court records <u>remain public record</u>, but should be <u>clearly marked EXPUNGED</u>.^{xix}</p> <ul style="list-style-type: none"> ○ The court’s paper file and the paper copies of the judgment of conviction, sentencing order, probation order, and abstract of judgment should be clearly marked “EXPUNGED PER IC 35-38-9-7. ” ○ All electronic records available via a public access website must be clearly marked expunged. <p>Any public records related to arrest, conviction or sentence must be clearly marked EXPUNGED.^{xx}</p> <p>Records that relate to the conviction that are in the possession of:</p> <ul style="list-style-type: none"> • Indiana State Police • Bureau of Motor Vehicles • Any Law Enforcement Agency^{xxi} <ul style="list-style-type: none"> ○ Records shall be marked expunged; and ○ entry shall be added to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged

		<p>Expungement order does not affect an existing or pending driver's license suspension. ^{xxii}</p> <p>Steps in Odyssey:</p> <ol style="list-style-type: none"> 1. Admin Event is added noting in the comment: "EXPUNGED PER IC 35-38-9-7. "
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ⁱ **I.C. § 35-38-9-1(b):**

"Not earlier than one (1) year after the date of arrest, if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final, the person may petition the sentencing court (if the person was sentenced), the court in which the person was charged (if the person was charged), or any court exercising criminal jurisdiction in Indiana (if the person was not charged or convicted) to seal records contained in. . ."

ⁱⁱ ***Id.***

ⁱⁱⁱ While this requirement is not specified by statute, since the statute does specify that cases in which a criminal cause number was assigned must be filed under the original criminal cause number, the Division recommends that all "arrest, no conviction" petitions be handled uniformly.

^{iv} **I.C. § 35-38-9-10(i):**

"A petition for expungement and an order for expungement are confidential."

^v **I.C. § 35-38-9-9(g):**

"This subsection applies only to a petition to expunge conviction records filed under sections 2 through 5 of this chapter. This subsection does not apply to a petition to expunge arrest records under section 1 of this chapter. A petitioner may seek to expunge more than one (1) conviction at the same time. The petitioner shall consolidate all convictions that the petitioner wishes to expunge from the same county in one (1) petition. A petitioner who wishes to expunge convictions from separate counties must file a petition in each county in which a conviction was entered."

^{vi} **I.C. § 35-38-9-10(i):**

"A petition for expungement and an order for expungement are confidential."

^{vii} **I.C. § 35-38-9-1(f):**

"Whenever the petition of a person under this section is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency."

^{viii} **I.C. § 35-38-9-1(f):**

“ . . . However, this chapter does not require any change or alteration in:

- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public;
- (2) the record of any court in which the criminal charges were filed; or
- (3) records that relate to a diversion or deferral program.

^{ix} The trial court judge has authority to interpret statutory language. Some judges may interpret the statutory language contained within I.C. § 35-38-9-1(f) to permit the court to order that the trial court’s file and records to be removed from public access.

^x **I.C. § 35-38-9-6(a)(1):**

“Order:

- (A) the department of correction;
- (B) the bureau of motor vehicles; and
- (C) each:
 - (i) law enforcement agency; and
 - (ii) other person;

who incarcerated, provided treatment for, or provided other services for the person under an order of the court; to prohibit the release of the person's records or information in the person's records to anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duty.”

^{xi} **I.C. § 35-38-9-6(a)(2):**

“Order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records.

Records sealed under this subdivision may be disclosed only to:

- (A) a prosecuting attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the official duties of the prosecuting attorney;
- (B) a defense attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the professional duties of the defense attorney;
- (C) a probation department, if:
 - (i) authorized by a court order; and
 - (ii) necessary to prepare a presentence report; and
- (D) the Federal Bureau of Investigation and the Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;
- (E) the:
 - (i) supreme court;
 - (ii) members of the state board of law examiners;
 - (iii) executive director of the state board of law examiners; and
 - (iv) employees of the state board of law examiners, in accordance with rules adopted by the state board of law examiners;for the purpose of determining whether an applicant possesses the necessary good moral character for admission to the bar; and

(F) a person required to access expunged records to comply with the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or regulations adopted under the Secure and Fair Enforcement for Mortgage Licensing Act.

^{xii} **I.C. § 35-38-9-6(b):**

“Except as provided in subsection (c), if a petition to expunge conviction records is granted under sections 2 through 3 of this chapter, the records of:

- (1) the sentencing court;
- (2) a juvenile court;
- (3) a court of appeals; and
- (4) the supreme court;

concerning the person shall be permanently sealed. However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.”

^{xiii} **I.C. § 35-38-9-6(d):**

“Notwithstanding subsection (b), a prosecuting attorney may submit a written application to a court that granted an expungement petition under this chapter to gain access to any records that were permanently sealed under subsection (b), if the records are relevant in a new prosecution of the person. If a prosecuting attorney who submits a written application under this subsection shows that the records are relevant for a new prosecution of the person, the court that granted the expungement petition shall:

- (1) order the records to be unsealed; and
- (2) allow the prosecuting attorney who submitted the written application to have access to the records.

If a court orders records to be unsealed under this subsection, the court shall order the records to be permanently resealed at the earliest possible time after the reasons for unsealing the records cease to exist. However, if the records are admitted as evidence against the person in a new prosecution that results in the person's conviction, or are used to enhance a sentence imposed on the person in a new prosecution, the court is not required to reseat the records.”

^{xiv} **I.C. § 35-38-9-6(c)**

“If a petition to expunge conviction records is granted under sections 2 through 3 of this chapter with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:

- (1) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and
- (2) provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

The supreme court and court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name.”

^{xv} **I.C. § 35-38-9-6(b):**

“ . . . However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.”

^{xvi} **I.C. § 35-38-9-6(e):**

“If a person whose conviction records are expunged under sections 2 through 5 of this chapter is required to register as a sex offender based on the commission of a felony which has been expunged:

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- (1) the expungement does not affect the operation of the sex offender registry web site, any person's ability to access the person's records, records required to be maintained concerning sex or violent offenders, or any registration requirement imposed on the person; and
 - (2) the expunged conviction must be clearly marked as expunged on the sex offender registry web site."

^{xvii} **I.C. § 35-38-9-6(f):**

"Expungement of a crime of domestic violence under section 2 of this chapter does not restore a person's right to possess a firearm. The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance with IC 35-47-4-7."

^{xviii} **I.C. § 35-38-9-5(b):**

"This section does not apply to the following:

- (1) A sex or violent offender (as defined in IC 11-8-8-5).
- (2) A person convicted of official misconduct (IC 35-44.1-1-1).
- (3) A person convicted of an offense described in:
 - (A) IC 35-42-1;
 - (B) IC 35-42-3.5; or
 - (C) IC 35-42-4."

^{xix} **I.C. § 35-38-9-7(b):**

"The court records and other public records relating to the arrest, conviction, or sentence of a person whose conviction records have been marked as expunged remain public records. However, the court shall order that the records be clearly and visibly marked or identified as being expunged. . ."

^{xx} ***Id.***

^{xxi} **I.C. § 35-38-9-7(c):**

The state police department, the bureau of motor vehicles, and any other law enforcement agency in possession of records that relate to the conviction ordered to be marked as expunged shall add an entry to the person's record of arrest, conviction, or sentence in the criminal history data base stating that the record is marked as expunged.

^{xxii} **I.C. § 35-38-9(b):**

". . . A petition for expungement granted under sections 4 through 5 of this chapter does not affect an existing or pending driver's license suspension."